
**IMPLEMENTATION OF THE STATE
LEGALIZATION IMPACT ASSISTANCE
GRANTS UNDER THE IMMIGRATION
REFORM AND CONTROL ACT OF 1986**

COMMONWEALTH OF MASSACHUSETTS



OFFICE OF INSPECTOR GENERAL
OFFICE OF ANALYSIS AND INSPECTIONS

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This study was conducted to determine the effectiveness of the Commonwealth of Massachusetts' implementation of State Legalization Impact Assistance Grants funds awarded under the Immigration Reform and Control Act of 1986.

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**Richard P. Kusserow
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EXECUTIVE SUMMARY

PURPOSE

The purpose of this inspection was to determine how effectively the Commonwealth of Massachusetts implemented the State Legalization Impact Assistance Grants (SLIAG) program, to identify potential problems early in the process, and to identify good practices which all States could share. The Commonwealth of Massachusetts is referred to as "State" in this report.

BACKGROUND

The SLIAG program was established under the Immigration Reform and Control Act (IRCA) of 1986 to reduce the financial burden of providing public assistance, public health assistance, and educational services to eligible legalized aliens. In Fiscal Year (FY) 1988, \$928.5 million in program funds were allocated to States, and funds will continue to be allocated through FY 1991. These funds also cover administrative costs for implementing SLIAG at the State and local levels. Payments are made for public assistance activities generally available to all needy individuals and public health assistance services offered under the States' public health programs. The payments also cover educational services designed to assist eligible legalized aliens to attain a satisfactory level of performance in school and to achieve English language proficiency and citizenship skills necessary to become permanent residents. The Family Support Administration (FSA) is responsible for administering the program.

Because SLIAG was a new program, FSA realized that problems would surface early in its implementation. In addition to the normal difficulties encountered in creating new processes and procedures, FSA recognized that SLIAG would have unique problems. Some of these issues include the diversity of programs which SLIAG encompasses, cultural and language barriers associated with the service population, maintaining confidentiality of information, and the extremely short time frames for the grant award process.

METHODOLOGY

In response to the anticipated difficulties with implementing SLIAG, FSA requested that the Office of Inspector General (OIG) conduct reviews in 10 States to determine the progress of States' implementing this program. The FSA selected nine States and the District of Columbia because of the variety of programs they offered, the number of eligible legalized aliens in the population, or the amount of the grant award. The nine States are Arizona, California, Colorado, Florida, Illinois, Massachusetts, New York, Texas, and Washington.

Interviews based on structured discussion guides for each major program area, as well as documentation furnished by FSA and State and local officials, built the base of information for this report. This report represents the review conducted in Massachusetts and reports on its implementation of the SLIAG program as of August 1988.

Both FSA and Massachusetts were committed to identifying problems and developing innovative and effective solutions for them. Immediately following our on-site visits, FSA was given an outline of the State concerns identified in this report.

FINDING: Since 1987, FSA has held national conferences and issued information to States on implementing the SLIAG program.

- The FSA held several national conferences beginning in 1987 to share information with States on SLIAG legislation, the implications for States, the application process, and the documentation of costs.
- The FSA also provided States with "Question and Answer" issuances and demographic data from the Immigration and Naturalization Service (INS).

FINDING: Massachusetts established a structure to identify organizational and program needs, and to adapt existing resources for SLIAG purposes.

- The heads of each department involved in implementing SLIAG programs held meetings with the Office for Refugees and Immigrants, and have designated specific persons for SLIAG implementation and administration. There was a good working relationship among all participating agencies.
- The State's Executive Order Number 257 prevents agencies from requesting and disseminating information on citizenship status unless required by Federal statute. Questions on citizenship status have been removed from all applications for services and benefits. The State is moving to implement the SLIAG program with these restrictions.

FINDING: Massachusetts also took steps to document expenditures and control disbursements.

- Massachusetts has recently implemented the Management Account Reporting System. This system provides for a uniform reporting capability and will be used by the Department of Education to document costs identifiable to specific eligible legalized aliens. As part of this system, the Office for Refugees and Immigrants can access the Department of Education's SLIAG account to monitor distribution of funds and identify any excess funds that may have accumulated.

Nevertheless, there were some funds control vulnerabilities.

FINDING: The FSA's definition of public assistance includes some public health assistance activities which created administrative and service delivery problems for Massachusetts' public health agencies.

FINDING: Conflicting interpretations of the terms "public charge" and "permanently residing under color of law" has caused uncertainties for aliens as to what services they are entitled to receive without fear of deportation.

FINDING: The FSA application review process created a number of significant problems for Massachusetts. Also, the FSA's application review process interfered with the State's ability to plan for services.

- Delay in FSA issuing the implementing regulation resulted in the State's inability to properly plan for SLIAG.
- Numerous policy misinterpretations and disagreements resulted because FSA did not provide definitive written instructions to assist Massachusetts in understanding SLIAG application requirements.
- The time frames were too short for submitting the initial SLIAG application, review and comment, and revisions of the application.
- The implementation of SLIAG-funded programs was delayed because of a significant delay in notifying Massachusetts of the grant award.
- No formal appeals process exists if programs or costs are denied in the first level review.

FINDING: At the time of the inspection, Massachusetts had not received formal guidelines from FSA on determining and claiming SLIAG administrative costs, and Massachusetts had not developed methods for determining and documenting these costs.

FINDING: The State Departments of Public Welfare and Public Health and the Bureau of Adult Education had not established methods to document costs for services and benefits provided to individual eligible legalized aliens.

As mentioned earlier, FSA and Massachusetts have already initiated action on some of the recommendations made in this report. Steps have been taken by FSA to provide States with more specific, formal guidelines for identifying and documenting actual program and

administrative costs. However, additional actions are necessary in other areas on the part of FSA and Massachusetts.

RECOMMENDATION: The FSA should reconsider its position to classify certain public health services as public assistance and make appropriate adjustments to this position.

- Several programs administered by the Department of Public Health are considered as public assistance for SLIAG purposes. This creates a burden on public health agencies who, for the first time, are required to identify individual eligible legalized aliens.

RECOMMENDATION: The FSA and the INS should further clarify what is meant by “public charge” and “permanently residing under color of law,” and widely disseminate this information to aliens who have raised concerns about their resident status.

RECOMMENDATION: The FSA should make its application and grant award process more orderly. Specifically, FSA should

- provide definitive written instructions on the SLIAG application requirements and establish a dialogue with Massachusetts on SLIAG policy, compliance, and reporting issues to minimize the confusion that occurred in the initial application process;
- ensure that sufficient time is allotted to the application process including Massachusetts’ initial application, FSA’s review and formal comment, Massachusetts’ consideration of FSA comments and negotiation of disputes, and its submission of the revised application for FSA approval;
- develop an appeals process to use if programs or costs associated with providing services are denied in the initial application process; and
- revise the grant award process for approved applications so that the notice of grant award reaches Massachusetts prior to the beginning of the fiscal year.

RECOMMENDATION: The FSA should issue written guidelines for determining and claiming administrative costs. Also, Massachusetts should develop methods for determining and documenting these costs.

RECOMMENDATION: The State Departments of Public Welfare and Public Health and the Bureau of Adult Education should develop a process or methodology to identify and document costs for services and benefits to individual eligible legalized aliens.

COMMENTS

The FSA and Massachusetts both commented on the draft report. The comments are included in Appendices B and C, respectively.

The FSA generally agreed with our findings and recommendations. The State, however, took exception to many of the statements made in the report. Nevertheless, both reported having taken a number of steps to improve implementation of SLIAG. Where appropriate, we have modified the report based on their comments.

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INTRODUCTION

PURPOSE

The Family Support Administration (FSA) requested that the Office of Inspector General (OIG) conduct an inspection in nine States and the District of Columbia to determine how effectively the States implemented the State Legalization Impact Assistance Grants (SLIAG) program awarded under the Immigration Reform and Control Act (IRCA) of 1986. The inspection included reviewing mechanisms in place to identify these funds and determining whether present or projected policies and procedures adhere to FSA guidelines. The FSA also was interested in identifying potential problems early in the process and any good practices which all States could share.

This report presents the results of the inspection pertaining to the Commonwealth of Massachusetts, referred to as "State".

BACKGROUND

Under IRCA, eligible legalized aliens may apply for permanent residency within a 1-year period after they are first eligible (i.e., by the 31st month after they receive temporary resident status).

This new population will increase the demand for State public assistance and public health assistance services significantly. It will also increase the demand for State educational services as these new residents obtain English language and civic skills needed to become U.S. citizens.

To help States defray many of the costs of providing public assistance, public health assistance, and educational services to eligible legalized aliens, IRCA authorized \$1 billion each year from Fiscal Years (FY) 1988 through 1991 for SLIAG grants, less an amount identified as the "Federal offset." With few exceptions, eligible legalized aliens are ineligible for federally funded public assistance programs such as Aid to Families with Dependent Children (AFDC), food stamps, and Medicaid. The "Federal offset" is the estimated cost to the Federal Government of providing these services or benefits to those few legalized aliens who are eligible for them. In FY 1988, the law allocated \$928.5 million to States.

To receive SLIAG funds, States must apply to the FSA Division of State Legalization Assistance, which is responsible for approving applications and administering the program. The application must be approved in total for a State to receive any SLIAG funds. The FSA

also provides States with technical assistance on policy issues and on the methods used to determine costs and verify actual costs.

The basic requirement for States to claim reimbursement is that costs must be allowable, reasonable, and allocable. State public assistance and public health assistance programs must be the same ones available to the general public. States cannot create new programs in these areas specifically for eligible legalized aliens. However, States may create new or additional education programs for eligible legalized aliens. States may also claim reimbursement for program administrative and SLIAG administrative costs.

Reimbursement for public assistance and public health assistance is limited only to the amount of State and local funds expended for SLIAG-related costs. The maximum SLIAG reimbursement for educational services is an average of \$500 per year per eligible legalized alien. Determining program administrative costs is made in accordance with the final regulation at 45 CFR 402.22.

The FSA is responsible for administering the program. Because SLIAG was a new program, FSA realized that problems would surface early in its implementation. In addition to the normal difficulties encountered in creating new processes and procedures, FSA recognized that SLIAG would have unique problems. Some of these issues include the diversity of programs which SLIAG encompasses, cultural and language barriers associated with the service population, maintaining confidentiality of information, and the extremely short time frames for the grant award process.

METHODOLOGY

The FSA selected nine States and the District of Columbia for the inspection because of the variety of programs offered, the number of eligible legalized aliens in the population, or the amount of the grant. The nine States are Arizona, California, Colorado, Florida, Illinois, Massachusetts, New York, Texas, and Washington. This report reviews Massachusetts' implementation of the SLIAG program as of August 1988.

Prior to conducting the inspection, the OIG developed structured discussion guides for each major program activity at the State and local levels. We held on-site discussions with representatives from the Office for Refugees and Immigrants; Department of Public Health; Office of Communities and Development; Department of Education, including potential providers; and Department of Public Welfare.

The visits were coordinated by staff from the Office for Refugees and Immigrants. Prior to the visit, materials supplied by the Office for Refugees and Immigrants were reviewed as well as the application that was approved by FSA. Materials supplied by respondents were also reviewed.

MASSACHUSETTS' ORGANIZATIONAL STRUCTURE

The Office for Refugees and Immigrants has been designated as the single point of contact. Organizationally, the Office for Refugees and Immigrants is in the Executive Office of Human Services. The Office for Refugees and Immigrants allocated certain percentages of its executive and fiscal staff salaries to SLIAG administration, in relation to the time spent on SLIAG. Direct SLIAG program staff are fully charged to the grant.

The Department of Public Health is also within the Executive Office of Human Services. Local health services are administered by local boards of health, with the overall responsibility resting with the State. In the State, there are few municipal health departments and no county health departments. The Department of Public Health has regional and district health officers who maintain a liaison role with individual boards of health.

The Department of Public Welfare is also located in the Executive Office of Human Services. There are 63 local offices around the State. Overall responsibility rests with the commissioner.

The Bureau of Adult Education is the responsible entity for SLIAG-funded educational programs. It is located in the Department of Education which has full jurisdiction for education at the local level.

The Division of Housing is part of the Executive Office of Communities and Development. This Division is responsible for programs to assist individuals and families which require housing and energy assistance.

FINDINGS AND RECOMMENDATIONS

Both FSA and Massachusetts were committed to identifying problems and developing innovative and effective solutions for them. Immediately following our on-site visits, FSA was given an outline of the State concerns identified in this report.

FINDING: Since 1987, FSA has held national conferences and issued information to States on implementing the SLIAG program.

- The FSA held several national conferences beginning in 1987 to share information with States on SLIAG legislation, the implications for States, the application process, and the documentation of costs.
- The FSA also provided States with “Question and Answer” issuances and demographic data from the Immigration and Naturalization Service (INS).

FINDING: Massachusetts established a structure to identify organizational and program needs, and to adapt existing resources for SLIAG purposes.

- The heads of each department involved in implementing SLIAG programs have held many meetings with the Office for Refugees and Immigrants, and have designated specific persons responsible for SLIAG implementation and administration. There was a good working relationship among all participating agencies.
- The State’s Executive Order Number 257 prevents agencies from requesting and disseminating information on citizenship status unless required by Federal statute. Questions on citizenship status have been removed from all applications for services and benefits. The State has directed resources to obtain the necessary program information and is moving to implement the SLIAG program despite these restrictions.

FINDING: Massachusetts also took steps to document expenditures and control disbursements.

- Massachusetts has recently implemented the Management Account Reporting System. This system provides for a uniform reporting capability and will be used by the Department of Education to document costs identifiable to specific eligible legalized aliens. As part of this system, the Office for Refugees and Immigrants can access the Department of Education’s SLIAG account to monitor distribution of funds and identify any excess funds that may have accumulated.

Nevertheless, there were some funds control vulnerabilities. Findings and recommendations concerning these vulnerabilities follow under major topic areas.

PUBLIC ASSISTANCE

Assistance or Service Activities

The Department of Public Welfare sought SLIAG reimbursement only for General Relief and Medicaid. Contractors/providers may supply employment and retraining services, day care services, and medical care for the uninsured eligible legalized aliens. There were no new programs established because of SLIAG.

Housing and related programs administered by the Executive Office for Communities and Development are included in the services available to eligible legalized aliens. The Fuel Assistance Program currently supplements Federal appropriations. To be eligible, the aliens' income must not exceed 175 percent of the poverty level. The Executive Office for Communities and Development was experiencing difficulty in determining benefits, especially in the low income home energy assistance program. The usual procedure would be to review the entire household, but if one or more individuals but not the total family unit falls into the eligible legalized alien category, benefits for the individuals will be difficult to determine.

The Gateway Cities Municipal Grants program is also within the purview of this office. It was a new program in FY 1987 and was fully operational in FY 1988. The targets are all immigrants and newcomers regardless of alien status.

The Executive Office for Communities and Development has not fully implemented the SLIAG portion of its program because of insufficient guidance from FSA.

Documentation of Eligible Legalized Alien Status

Public assistance programs will use the same application process for eligible legalized aliens as are used for all individuals requesting services. This includes the usual social work intervention and verification process. For General Relief, citizenship status is not requested, but verification of State residency is performed. In the Medicaid program, a retroactive match search occurs before claims are made for eligible legalized aliens, but there is not a "citizen" field, which is part of the computer file.

The Department of Public Welfare has not established a formal system to identify individual eligible legalized aliens due, in part, to the Executive Order's prohibition of discrimination based on alien status.

Program Costs

The eligible legalized aliens will abide by the same program guidelines as other recipients. Eligibility for program services will be verified every six months. Vouchers for reimbursement of services for eligible legalized aliens will come into the State centrally and pass through normal edits and screens, with utilization review a part of this process.

Administrative Costs

The Department of Public Welfare has its own indirect cost rate established by the U.S. Department of Health and Human Services (HHS). For budget purposes, the State estimated administrative costs and the number of eligible legalized aliens who would access services. This estimate was done because there was no history on the population or a quality control sample from which costs could be projected. As a benchmark, the current legal resident aliens' use rate was determined and a cost allocation formula used based upon a percentage of the case load. It was felt that the small estimated case load of eligible legalized aliens did not make it cost efficient to modify the present accounting system.

Drawdown of Funds and Cash Balances

The Office for Refugees and Immigrants will draw SLIAG Federal funds for public assistance each quarter, with reimbursement being processed through the State treasurer's office and deposit directly to the State's general fund. In effect, drawdown will replace those State funds already expended for SLIAG-related services.

PUBLIC HEALTH ASSISTANCE

Assistance or Service Activities

The Department of Public Health will provide the following public health assistance services:

- emergency medical services coordination,
- uncompensated care,
- community health centers,
- preventive dental care,
- family health programs,
- environmental health,
- health care quality,
- alcohol and drug abuse prevention,
- AIDS screening and treatment,

- immunizations,
- Healthy Start Program,
- handicapped children,
- lead poisoning prevention,
- tuberculosis screening and treatment,
- sexually transmitted diseases screening and treatment, and
- Gateway Cities Municipal Grants.

The State had not established any new programs because of SLIAG funding. The Healthy Start Program is the newest program and has existed since FY 1986. Although listed in the public assistance portion of the State's SLIAG application, the program is within the operations of the Department of Health.

All of the chronic care hospitals are State-owned and State-operated, and under the Department of Public Health's supervision. The intake workers in the Healthy Start and the handicapped childrens programs are State employees. The department contracts with the Women, Infants, and Childrens Program; community health centers (private organizations); alcohol and drug programs; and family health centers to provide public health assistance services. With regard to AIDS, the State provides outreach services and case management, and contracts for residence and hospice care.

Documentation of Eligible Legalized Alien Status

The Department of Public Health has not established a formal system to identify individual eligible legalized aliens because of the Executive Order that prohibits discrimination because of alien status. The department feels they need more guidance in establishing a mechanism to retroactively identify the eligible legalized aliens.

Program Costs

Both State agencies and contractors/vendors are reimbursed after costs have been incurred, without any advance funds being paid. Most contractors are expected to report expenses on a biweekly or monthly basis. Invoices are submitted indicating claimed costs and are reviewed by audit department staff located at the executive level.

The Office for Refugees and Immigrants will draw SLIAG funds each quarter to the State treasurer's office. For SLIAG reimbursable services, deposits are made directly to the State's general fund, since the services have been funded under the State's Appropriation Act. For contracts with private vendors, requests for proposals will be written and will be treated as a

local grant. A portion of the State's cost of such programs is reimbursed from SLIAG. However, there are no service contracts or grants directly attached to SLIAG funds.

FINDING: The FSA's definition of public assistance includes some public health assistance activities which created administrative and service delivery problems for Massachusetts' public health agencies.

If a program or service is considered public health, the population ratio method for establishing costs can be used. However, where the public health program is considered public assistance, a new burden is imposed upon the public health agencies which must develop and implement new procedures for identifying individual eligible legalized aliens to document costs. Several programs administered by the Department of Public Health and Division of Housing are considered public assistance programs for SLIAG reimbursement purposes. To satisfy the needs of the SLIAG application, programs within public health were split between public health assistance and public assistance. Although this breakout is based on Federal guidelines, the department feels that it is an artificial definition. Agency staff officials are also concerned that asking individuals about legal status will seriously affect their accessing public health available services.

RECOMMENDATION: The FSA should reconsider its position to classify certain public health services as public assistance and make appropriate adjustments to this position.

Administrative Costs

The Department of Public Health has its own indirect cost rate established by the HHS. Administrative costs for FY 1989 are expected to be 1.5 percent of total expenses.

Reimbursement for public health administration will be distributed in proportion to program costs. Since there was no history on this population or a sampling conducted, the State estimated the number of people who will access the services as well as the administrative costs.

Drawdown of Funds and Cash Balances

Quarterly, the Office for Refugees and Immigrants will draw SLIAG funds to the State treasurer's office. For SLIAG public health services, reimbursement will be deposited directly to the State's general fund.

EDUCATION

Assistance or Service Activities

Educational activities will center around adult education and fall under the jurisdiction of the Department of Education's Bureau of Adult Education. English as a Second Language classes and citizenship classes will be offered to eligible legalized aliens. No new programs have been established, but there are plans to expand the existing programs and to negotiate contracts with new providers.

The majority of current services are provided by contractors. These include basic adult education and kindergarten through grade 12 equivalent courses, courses in secondary education leading to a General Equivalency Diploma, native language courses considered a precursor to classes in English as a Second Language, and grants given to local school boards. In addition, the department provides services and tutoring programs in correctional facilities, but neither of these will be claimed as part of the SLIAG program.

Documentation of Eligible Legalized Alien Status

The actual system to identify eligible legalized aliens had not been implemented as of the review period because the Department of Education had not yet issued its request for proposals for SLIAG-funded classes. The bureau indicated that it is waiting to receive guidance as to what system will be acceptable. Adaptation of the current enrollment system will be made by checking alien card numbers and adding pertinent questions at intake.

In the absence of an overall list of eligible legalized aliens, contracts will be made with vendors on "good faith" using application projections from a statewide data base. Moreover, the current refugee policy is bound by the Executive Order covering articles on nondiscrimination which prevents agencies from requesting and disseminating information on citizenship status unless required by Federal statute. All applications in use have these questions deleted. Therefore, education agencies also have not established a formal system to identify individual eligible legalized aliens. The Department of Education, however, feels that it will be able to document outcomes through its performance-based contracts. The overall accounting system to monitor the accounts for all the programs has not been finalized.

Massachusetts has relied almost entirely on service population estimates provided by the Immigration and Naturalization Service, the U.S. Department of Health and Human Services, qualified designated entities, and unserved number estimates. As a resident of Massachusetts, the seasonal agricultural worker will be eligible for all services.

Program Costs

The Department of Education had not established guidelines for identifying eligible legalized aliens and determining program costs.

Administrative Costs

The Department of Education's indirect cost rate is 10 percent and was established by the Department of Education. The guidelines for determining actual administrative and program costs have not been finalized. It is anticipated that the bureau will use a performance-based formula in contracting with providers.

The Department of Education had stated that its actual administrative costs for the education programs will far exceed the 1.5 percent ceiling permitted under SLIAG.

Drawdown of Funds and Cash Balances

Based on previous experience with education contractors, cash advances are an uncommon practice. Community-based organizations might request an advance, but it would be a minimal advance payment. In discussions, potential vendors revealed that advanced funds would be needed for publicity.

The accounting system will not have to be modified. The current Massachusetts Management Account Reporting System is an efficient and uniform reporting system. The decision as to whether the Office of Refugees and Immigrants or the Department of Education will draw education-related SLIAG funds into the State treasurer's office has not been made. The funds will subsequently be transferred into an account in the Department of Education. Since educational programs do not have

State-appropriated funds, SLIAG funding must be available up front to allow the Bureau to spend on program activities.

The automated account in the comptroller's office allows the Office for Refugees and Immigrants to monitor balances by accessing the account with the Office of Human Services' special code. Allocations which are not spent for educational programs would raise questions about the need of the service or its low enrollment.

CROSSCUTTING ISSUES

FINDING: Conflicting interpretations of the terms "public charge" and "permanently residing under color of law" have caused uncertainties for aliens as to what services they are entitled to receive without fear of deportation.

The single point of contact agency indicated that various interpretations and a great deal of confusion had centered around the meaning of "public charge." Not having a clear understanding of "public charge" places the single point of contact agency or the local staff-level person at a disadvantage and may jeopardize the individual's status as an eligible legalized alien.

Also, the definition of “permanently residing under color of law” was confusing to the agencies. This category is open to interpretation and is also confusing to eligibility workers, because various programs may treat this definition differently.

RECOMMENDATION: The FSA and the INS should further clarify what is meant by “public charge” and “permanently residing under color of law,” and widely disseminate this information to aliens who have raised concerns about their resident status.

FINDING: The FSA application review process created a number of significant problems for Massachusetts. Also, the FSA’s application review process interfered with the State’s ability to plan for services.

- Delay in FSA issuing the implementing regulation resulted in the State’s inability to properly plan for SLIAG.
- Numerous policy misinterpretations and disagreements resulted because FSA did not provide definitive written instructions to assist Massachusetts in understanding SLIAG application requirements.
- The time frames were too short for submitting the initial SLIAG application, review and comment, and revisions of the application.
- Implementing SLIAG-funded programs was delayed because of a significant delay in notifying Massachusetts of the grant award.
- No formal appeals process exists if programs or costs are denied in the first level review.

According to final regulations published March 10, 1988, States had to submit the FY 1988 application no later than May 16, 1988. Revisions to the application had to be submitted by July 1, 1988, and the FY 1989 application had to be submitted no later than July 15, 1988. Massachusetts submitted its first application on May 12, 1988, and a revised application on June 14, 1988, which was approved on June 23, 1988. At the time of the review in August 1988, the grant funding had not been awarded. This delay particularly impacted educational programs since Massachusetts had not allocated State funds for these programs up front.

RECOMMENDATION: The FSA should make its application and grant award process more orderly. Specifically, FSA should

- provide definitive written instructions on the SLIAG application requirements and establish a dialogue with Massachusetts on SLIAG policy, compliance, and reporting issues to minimize the confusion that occurred in the initial application process;
- ensure that sufficient time is allotted to the application process including Massachusetts' initial application, FSA's review and formal comment, Massachusetts' consideration of FSA comments and negotiation of disputes, and its submission of the revised application for FSA approval;
- develop an appeals process to use if programs or costs associated with providing services are denied in the initial application process; and
- revise the grant award process for approved applications so that the notice of grant award reaches Massachusetts prior to the beginning of the fiscal year.

FINDING: At the time of the inspection, Massachusetts had not received formal guidelines from FSA on determining and claiming SLIAG administrative costs, and Massachusetts had not developed methods for determining and documenting these costs.

The State Departments of Public Welfare and Public Health, as well as the Bureau of Adult Education, recognize the need for capturing administrative costs. However, as of the time of the review, they had not developed methodologies to do this.

The agencies indicated that there is a need for formal guidelines dealing with acceptable methods of documenting administrative costs. The agencies felt that adequate guidelines did not exist for them to determine allowable SLIAG administrative activities.

However, Massachusetts agencies must recognize that there are limits on the directions that FSA can provide. Guidelines must be flexible enough to accommodate variations in State systems and internal processes. Ultimately, Massachusetts, as the grantee, is responsible for developing and implementing SLIAG program activities, and for documenting administrative costs and expenditures.

RECOMMENDATION: The FSA should issue written guidelines for determining and claiming administrative costs. Also, Massachusetts should develop methods for determining and documenting these costs.

FINDING: The State Departments of Public Welfare and Public Health and the Bureau of Adult Education had not established methods to document costs for services and benefits to individual eligible legalized aliens.

Although each agency realizes the importance of determining eligible legalized alien status at intake, the current philosophy of Massachusetts is to serve all those who qualify for the services requested. This philosophy is reinforced by the current Executive Order which prohibits discrimination against State residents because of alien status. Because of this Executive Order and some programs being shifted to other agencies for SLIAG purposes, the agencies had not developed a system to document costs for services and benefits to individual eligible legalized aliens. However, the Executive Order's article on nondiscrimination does contain a provision allowing citizenship information to be requested for Federal purposes.

RECOMMENDATION: The State Departments of Public Welfare and Public Health and the Bureau of Adult Education should develop a process or methodology to identify and document costs for services and benefits to individual eligible legalized aliens.

OIG RESPONSE TO COMMENTS

The FSA and the Commonwealth of Massachusetts both commented on the draft report.

The FSA

The FSA has generally agreed with the OIG report findings and recommendations. The FSA has taken a number of steps to improve implementation of the SLIAG program including clarifying program policies and procedures, as well as guidance on establishing and documenting administrative and program costs.

The FSA questioned the statement that the new population would significantly increase public assistance and public health assistance services. Early estimates indicated that large numbers of aliens would qualify to access the SLIAG program. The report recognized that information obtained during the review determined that substantial increases in workloads and expenditures could occur in these areas as well as in education. However, we understand from recent discussions with States' officials that demand for services nationally is falling behind earlier projections.

The FSA's definition of public assistance included some public health activities which created administrative and service delivery problems for Massachusetts' public health agencies. The OIG recommended that FSA reconsider this position. The FSA replied that they see this primarily as an issue of cost identification and that they will work with the States to develop methods of documenting costs which are consistent with FSA's responsibilities as stewards of public funds. We believe that FSA's actions to identify alternative methods is responsive to our concerns.

We continue to believe that a strict interpretation which permits public health costs to be claimed only for specific eligible legalized aliens is burdensome to the States and, in many cases, would require considerable revisions to the States' system or statutory requirements. However, we do agree that FSA's use of alternative systems, such as the Cost Documentation System and a revised population ratio method system which reflects usage, would be a positive effort to enhance cost effectiveness without requiring States to develop new systems or make considerable revisions to present systems. The population ratio method could be revised to consider not only eligible legalized aliens in the service population, but use of those services by the eligible legalized alien population based on information already obtained from program experience. Where appropriate, other alternatives might be used which would produce a more efficient system for the States and address congressional intent that the States would not be required to establish new or elaborate systems.

We recognize FSA's efforts in cooperation with the INS to assist the States in learning more about the INS policy on public charge issues.

We reported that no formal appeals process exists if program costs are denied in the first level review. We agree with FSA's statement that the Grant Appeals Board does have jurisdiction over matters for withholding and repayment of SLIAG funds. However, it was the States' concern that an effective appeals mechanism be in place for issues involving programs or costs at the first level of FSA's review in the application process.

The FSA made numerous comments to clarify certain matters of fact, policy, or procedure. We have included these comments verbatim in Appendix B.

The Commonwealth of Massachusetts

The State took exception to many of the statements made in the OIG report. Their comments are included verbatim in Appendix C. Nevertheless, since the time of the on-site review, the State has taken significant steps to effectively implement the SLIAG program through procedural and system changes. Massachusetts, along with other States, has worked with INS and HHS and made significant efforts to clarify the "public charge" issue, which has been a deterrent to eligible legalized aliens in accessing services.

The State also clarified several policy and procedural areas as well as its organizational structure described in the draft report. We have made some modifications in the report based on their comments.

APPENDIX A

GOOD PRACTICES

A number of practices have been identified that other States could share.

1. Massachusetts has implemented a new uniform reporting system for education programs. This system appears efficient and will provide the basis from which costs can be captured for eligible legalized aliens, and reports submitted timely.
2. The Office for Refugees and Immigrants has developed a methodology of monitoring funds allotted to the Department of Education. An automated account in the comptroller's office permits the Office for Refugees and Immigrants to access the Department of Education's SLIAG account with an Office of Human Services' special code. This process permits the Office for Refugees and Immigrants to determine if SLIAG funds are being disbursed as planned or if excesses may have accumulated.
3. The Office for Refugees and Immigrants took the initiative to hold numerous meetings with heads of involved State departments. This facilitated effective communications and education toward implementation and dissemination of program provisions. The departments' assignment of designated staff to work with the Department for Refugees and Immigrants also was an important step.

APPENDIX B

FAMILY SUPPORT ADMINISTRATION'S COMMENTS



September 22, 1989

Memorandum

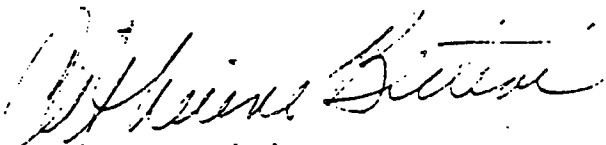
Date: Acting Assistant Secretary
for Family Support

From:
Subject: OIG Draft Report: Implementation of the State Legalization
Impact Assistance Grants Under the Immigration Reform and
Control Act of 1986 - State of Massachusetts (OAI-07-88-
00447)

To: Richard P. Kusserow
Inspector General

Attached are the Family Support Administration comments on the above report. Many of our comments are technical in nature due to the complexity of the legislation and the fact that the SLIAG program was very new at the time of the review.

We appreciate the assistance and cooperation we have received from you in response to our request to conduct this round of reviews of the SLIAG program. The reports we received are very useful to us in understanding how States are implementing the program.


Catherine Bertini

Attachment

OIG DRAFT REPORT:
Implementation of the State Legalization Impact Assistance
Grants
Under the Immigration Reform and Control Act of 1986:
MASSACHUSETTS

The Family Support Administration's comments are divided into three sections: Comments on background information and other narrative material that does not relate directly to the draft report's findings, comments on the findings, and responses to the draft report's recommendations.

Narrative:

Page 1 (Background) -- The draft report says, "This new population will increase the demand for State public assistance and public health assistance services significantly." The draft report isn't clear whose conclusion this is or upon what data and analysis the conclusion is based. The final report should clarify these points.

In the course of implementing SLIAG, we have discovered that neither State and local public health programs nor, with few exceptions, public assistance programs, inquire about legal status. This suggests that at least some aliens were using these services before legalization and that newly legalized aliens do not represent a "new population" for public assistance and public health assistance services. Preliminary cost data from States suggests that newly legalized aliens are accessing public assistance services at rates far lower than the general population. There are indications that a backlog of public health needs existed and were identified during the medical examinations required of all applicants for legalization. However, there is no data to suggest that, other than this temporary bulge in demand for public health services, newly legalized aliens will generate a significant increase in demand for public health assistance or public assistance services.

Page 2 (Background) -- The draft report says, "States must develop a method acceptable to FSA for determining administrative costs." The final report should note that several methods for determining the share of administrative costs in ongoing programs that are allocable to SLIAG and which are acceptable a priori are specified in the regulation at 45 CFR 402.22(b). The process of determining SLIAG administrative costs (those costs incurred in administering the SLIAG grant itself), like all costs associated with administering HHS grants, is governed by 45 CFR Parts 74 and 92 and relevant OMB circulars.

Findings:

Finding: Since 1987, FSA has held national conferences and issued information to States on implementing the SLIAG program.

Comments: Since the OIG's onsite visits in August 1988, we have continued to provide assistance to States. We have conducted several more workshops and meetings to assist States in implementation. In October 1988, we issued a compendium incorporating the extensive formal guidance previously provided to States on methods of cost documentation. We also have provided assistance to individual States in the form of correspondence, telephone consultation, and onsite technical assistance. We are in the process of conducting initial program reviews of the major States, and intend to visit selected other States as well. We request that the final report reflect this continuing dialogue with States.

Finding: The FSA's definition of public assistance includes some public health activities which creates administrative and service delivery problems for Massachusetts.

the question how the definitions of public health and public assistance create service delivery problems for Massachusetts' public health agencies. By law and regulation, all programs or activities under both categories must be generally available. In practice, this means that SLIAG funds are available only to reimburse costs in ongoing, generally available programs. In most programs, immigration status is not a condition of eligibility. If the alien is eligible for services, he or she would receive those services regardless of whether they were reimbursed under SLIAG. The final report should clarify this point.

The draft report notes that "there is no quarrel with the logic of FSA's definition of public assistance versus public health," but does not explain why the OIG recommends that FSA reverse its logic. The final report should explain that the regulatory definitions of public assistance and public health assistance are based directly on IRCA.

Programs of public assistance are defined as programs that "provide for cash, medical or other assistance...designed to meet the basic subsistence or health needs of individuals" [section 204 (j)(2)(A) emphasis added]. Consistent with IRCA's explicit inclusion of medical assistance under the public assistance category, FSA considers State or locally funded programs that provide medical treatment to needy individuals to be public assistance programs.

IRCA defines programs of public health assistance as programs which "provide public health services, including immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-

"communicable diseases, and family planning services" [section 204 (j)(3)(A)]. These statutory definitions and the legislative history indicate that Congress intended to allow certain traditional public health functions under the public health assistance category and medical assistance to the needy under the public assistance category. In implementing SLIAG, we have followed that statutory framework. We have defined public health assistance as, among other things, programs or activities that "are provided for the primary purpose of protecting the health of the general public" [45 CFR 402.2]. The scope of programs included in that regulatory definition of public health assistance goes far beyond the specific activities listed in IRCA.

The public assistance/public health assistance categorization issue is primarily one of cost documentation requirements, not the allowability of costs associated with any particular health program. Under our regulation, States are allowed to use a single ratio of the number of ELAs in the service population to the total service population to establish actual costs for public health assistance programs, as defined for SLIAG. Implicit in this method is the assumption that eligible legalized aliens will access programs in the same frequency and at the same cost as the general population. We do not believe this assumption to be appropriate for medical assistance programs that provide treatment to needy individuals. To the contrary, the information that we have to date indicates that allowing use of the population ratio method for these programs generally would overstate costs, dramatically in some cases. However, we would be willing to allow use of the

population method for any program for which there is an empirical basis to indicate that doing so would not overstate costs.

FSA realizes that many public assistance and public health assistance programs do not routinely collect information on immigration status but has found that these programs do collect social security numbers. That is why we funded and devoted substantial staff resources to developing a system that will match the social security numbers of program participants with those of newly legalized aliens. This system gives States information on the number of newly legalized aliens participating in a program and the cost of services to them. It is now available and allows States to establish costs for FY 1988 as well as current and future years. Recently, we sent State SLIAG Single Points of Contact suggestions for other possible methods for establishing costs. None of these alternative methods requires setting up new administrative mechanisms or checking the status of all program participants.

We will continue to work closely with Massachusetts to develop methodologies to document costs for all programs in its approved applications.

Finding: The FSA application review process created a number of significant problems for Massachusetts. Also, the FSA's application review process interfered with the State's ability to plan for services.

Comments: The draft report says that the time period for submission, review, revision and approval of the initial application was too short. We agree that it

would have been possible to have had a longer period of time between the publication of the final regulation and the deadline for submission and approval of FY 1988 and FY 1989 applications. However, the final report should note that, because of the way IRCA set up the allocation formula, one major reason for the compressed timeframe was that we could not award funds to any State until all States' applications had been approved. In order for us to run the allocation formula, which IRCA requires to include estimates of costs, we must have approved estimates for all States before we can calculate State's allocations.

The draft report says that "numerous policy misinterpretations and disagreements resulted because FSA did not provide definitive written instructions or requirements." Had there been more time, we would have communicated more extensively in writing. Our current practice is to communicate in writing on all substantive issues regarding State applications, amendments, and end-of-year reports.

The report says that no formal appeals process exists if programs or costs are denied. The Grant Appeals Board has jurisdiction over issues related to the withholding and repayment of funds. For other matters, the State may follow normal procedures for disagreeing with an agency finding.

Finding: At the time of the inspection, the Commonwealth of Massachusetts had only informal guidelines from FSA on determining and claiming SLIAG administrative costs, and Massachusetts had not developed methods for determining and documenting these costs.

Comments: Several methods for determining the share of administrative costs in ongoing programs that are allocable to SLIAG and which are acceptable a priori are specified in the regulation at 45 CFR 402.22(b). Additional guidance is offered in the manual "Establishing and Documenting Actual Costs," October 1988, Modules 8 and 9. The process of determining SLIAG administrative costs, like all costs associated with administering HHS grants, is governed by 45 CFR Parts 74 and 92 and relevant OMB circulars.

We would like to note that this comment applies to the draft report's discussion under public assistance administrative costs and public health assistance administrative costs. We agree with the draft report's assertion that "[U]ltimately Massachusetts, as the grantee, is responsible for...fiscal documentation of costs and expenditures."

Recommendations:

Recommendation: The FSA should reconsider its position to classify certain public health services as public assistance and make appropriate adjustments to this position.

Response: As discussed above, the primary issue relating to the definitions of public assistance and public health assistance is one of cost documentation. States would like to use the population ratio method for all programs run by their health departments. The final report should clarify whether the OIG is recommending that we allow use of the population ratio in programs where, as discussed above, its use would likely overstate actual costs.

We believe that using the population method for all programs run by State health departments would be inconsistent with our responsibility to exercise fiscal responsibilities in establishing actual costs, especially where ELAs are a small percentage of a State's population or for programs that few ELAs access. We will continue to work with States to ensure that a method is available to allow them to establish actual costs for each program in their approved applications, consistent with our responsibilities as stewards of public funds.

Recommendation: The FSA and the Immigration and Naturalization Service (INS) should further clarify what is meant by "public charge" and "permanently residing under color of law"; and widely disseminate this information to the alien population who have raised concerns about its resident status.

Response: Under IRCA and the Immigration and Nationality Act, the INS alone is responsible for determining whether individuals are likely to become public charges. FSA cannot establish policy on this issue. Nor can FSA disseminate information directly to the alien population. INS is precluded by IRCA from providing names and addresses of eligible legalized aliens to outside agencies.

However, we agree that it is important that all concerned know INS policy on the public charge issue. INS representatives have made presentations at virtually all of our workshops and conferences. At these meetings, States have been able to ask questions and receive direct information from the INS. We have communicated to States all information provided to us by INS on this and other pertinent issues, and will

continue our policy of disseminating any relevant information that we receive.

Recommendation: The FSA grant process should be made more orderly.

Response: The draft report's recommendation refers to the FSA grant process, but the specifics indicate that it is referring to the SLIAG application and grant award process. The language of the recommendation should be more specific.

We agree that the application process should be conducted in a more orderly fashion than was the case for the initial submissions. As the draft report indicates, the timeframes for the FY 1988 and FY 1989 application processes were necessarily short. In effect, the States and we had to complete two application processes in less than a year. We do not expect similar problems for the FY 1990 and FY 1991 application processes.

To ensure that States have adequate time to prepare their FY 1990 applications based on empirical data, we have extended the deadline from July 15 to October 1. Additionally, we have encouraged States to submit as early as possible any new programs, questions, or issues, and have advised them that they may submit all or portions of their applications at any time.

In order to reduce the possibility of misunderstanding, we have advised States that we will communicate all substantive questions and concerns on their FY 1990 applications in writing, as was done for

States' end-of-year reports. We issued extensive written guidance on the FY 1990 application process and the standards we will apply. The draft report also recommends that we develop an appeals process to use if programs or costs associated with providing services are denied in the initial application process. We do not believe such a process is necessary. The Department's Grant Appeals Board has jurisdiction over cases involving the repayment or withholding of funds. Normal channels within the Department are open to States that disagree with decisions made during the course of application review.

Recommendation: The State Departments of Public Welfare and Public Health and the Bureau of Adult Education should develop a process or methodology to identify and document costs for services and benefits to individual eligible legalized aliens.

Response: HHS has made a variety of options for tracking costs available to States. If it is not possible or cost effective for States to base their SLIAG related costs on an actual count of eligible legalized aliens accessing services, States may opt to use the Cost Documentation System, the population ratio method (for public health assistance), or statistical sampling, or the State may suggest alternative methods to HHS.

APPENDIX C

MASSACHUSETTS' COMMENTS



The Commonwealth of Massachusetts
Executive Office of Human Services
Office For Refugees and Immigrants
Two Boylston Street, Boston, Massachusetts 02116

MICHAEL S. DUKAKIS
GOVERNOR
PHILIP W. JOHNSTON
SECRETARY
DANIEL M. LAM
DIRECTOR

AREA CODE (617)
727-7883

September 21, 1989

Mr. Richard P. Kusserow
Inspector General
Office of the Inspector General
Department of Health and Human Services
Washington, D.C. 20201

Dear Mr. Kusserow:

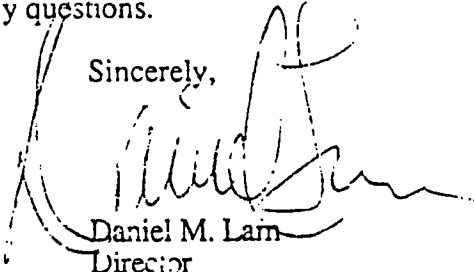
Enclosed is our response to the draft inspection report entitled "Implementation of the State Legalization Impact Assistance Grants under the Immigration Reform and Control Act of 1986: Commonwealth of Massachusetts" issued by the Office of the Inspector General (OIG) in June, 1989. This report presented findings from the OIG's visit to Massachusetts in July, 1988. The inspection was intended to be broad in scope; its purpose was to identify potential problems with SLIAG programs and to offer states general assistance at the beginning stages of SLIAG implementation.

Unfortunately, the OIG review is of limited usefulness because it occurred before the Department of Health and Human Services issued official policy guidance regarding the claiming of costs from SLIAG. Many of the OIG findings result directly from this absence of a clearly defined federal policy or directive regarding the implementation of cost claiming methods. Since the time of the review, HHS policy guidance has been issued, Massachusetts has received official HHS approval for program-specific methods to identify SLIAG-related costs, and actual costs have been reported for the majority of these programs for Federal Fiscal Years 1987 and 1988.

Further, the OIG draft report includes a number of specific findings and other statements containing errors of fact. We appreciate the opportunity to identify these errors, and to present information to clarify the issues. We hope that you will incorporate this information into your final report.

Please do not hesitate to call me if you have any questions.

Sincerely,


Daniel M. Lam
Director

Enclosure

MASSACHUSETTS COMMENTS TO DRAFT OIG REPORT ON SLIAG IMPLEMENTATION

September, 1989

- 1) OIG Statement: Background (Executive Summary, page i)
- *The [SLIAG] payments also cover educational services designed to assist eligible legalized aliens to attain a satisfactory level of performance in school and to achieve English language proficiency and citizenship skills necessary to become permanent residents.*

Massachusetts Comment

- Under the Immigration Reform and Control Act and SLIAG regulations, allowable educational services are much broader than this. States may pay for services described in the Adult Education Act delivered to eligible legalized alien (ELA) adults not enrolled in school, up to a specified average dollar amount. For Federal Fiscal Years 1989 and 1990 Massachusetts has chosen to prioritize the use of its SLIAG funds to provide English as a Second Language (ESL) and Civics classes designed to help ELA's become permanent resident.

- 2) Description (p. 3)
- *The Office for Refugees and Immigrants has allocated 30% of select staff positions to the SLIAG program.*

Comment

- After lengthy discussions with Region I FSA staff, the Office for Refugees and Immigrants allocated certain percentages of central ORI executive and fiscal staff salaries to SLIAG administration, in relation to the time spent on SLIAG. Direct SLIAG program staff are fully charged to the grant.

- 3) Finding (p. 3, also Exec. Summary p. ii)
- *The FSA held several national conferences to share information with states on the documentation of costs. The FSA also provided states with "Question and Answer" issuances and demographic data from the INS.*

Comment

- Official HHS policy regarding cost documentation methods was not furnished to States until October, 1988, long after the OIG visit. The Question and Answer issuance provided informal guidance only, and focussed on grant application procedures rather than cost claiming methodologies.

- 4) Finding (pp. 4, 9, 12, 13, also ii)
- *The State's Executive Order Number 257 prevents agencies from requesting information on citizenship status unless required by Federal statute. Questions on citizenship status have been removed from all applications for services and benefits.*

Comment

- The Governor's Executive Order Number 257 prohibits employees or agents of the Commonwealth from asking program applicants about their citizenship or immigration status unless required by federal statute, regulation, or court decision. It does not supersede State statutes explicitly requiring such inquiries for certain State programs.

The policy is designed to prevent the creation of regulatory or procedural barriers to access for programs which do not have a legal eligibility requirement based on citizenship or immigration status, and which would tend to discriminate against non-citizens in a variety of immigration statuses, as well as citizens who might appear or sound "foreign". Programs which do not have legal authority to condition eligibility for benefits on the grounds of citizenship or immigration status have removed such questions from their applications.

The Governor's Legal Counsel has made a determination that the Executive Order permits agencies to obtain immigration status information for certain programs, as it is required by the Immigration Reform and Control Act creating SLIAG, and the SLIAG regulations, in order to claim federal reimbursement.

Massachusetts has worked closely with FSA to establish cost-claiming methods for programs which minimize the need to inquire into applicants' immigration status, as this tends to discourage eligible applicants from using services which they need. Chief among these methods is the computerized Cost Documentation System, operated under contract by Martin Marietta Corporation, which counts the number of ELA's using a program through matching Social Security numbers.

- 5) Finding (p. 4, also iii)
- *There are fund control vulnerabilities.*

Comment

- Massachusetts strongly objects to this assertion. No specific fund control vulnerabilities are identified anywhere in the report. It is our belief that all funds administered by this office and other SLIAG participating agencies are meticulously controlled.

- 6) Finding (p. 4)
- *The Department of Public Welfare will offer General Relief, Medicaid under specific circumstances, homeless services, refugee resettlement, Supplemental Security Income (SSI), and employment and retraining services for ELAs.*

Comment

- ELAs are not eligible for refugee resettlement programs. Of the other programs cited, Massachusetts has sought SLIAG reimbursement only for General Relief and Medicaid.

- 7) Description (p. 5)
• *The Division of Housing is responsible for programs to assist individuals and families that require energy and housing assistance. The Gateway Cities Municipal Grants program is also within the purview of the Housing Division.*

Comment

- The Executive Office for Communities and Development (EOCD) is responsible for these programs. Housing and rental assistance programs are within EOCD's Division of Housing Development. Fuel Assistance is administered by the Division of Neighborhoods and Economic Opportunity. The Gateway Cities Program is within the Division of Municipal Development.

- 8) Finding (p. 5)
• *The Department of Public Welfare has not established a formal system to identify individual ELAs due to the Executive Order's prohibition of discrimination based on alien status.*

Comment

- At the time of the OIG review, the Department of Public Welfare had not developed a final cost claiming methodology for General Relief or Medicaid. The Department was waiting for FSA to issue guidelines for the CDS system.

The Executive Order was not the obstacle to establishing a claiming system. For example, documentation of a non-citizen applicant's immigration status is presented as part of the Medicaid application process. However, the applicant's alien registration number does not appear as a field in the Department's client tracking system. The Department did not believe that revising its computer system to include such a field would be cost-effective in order to claim a very small amount of SLIAG reimbursement, when a system based on matching Social Security numbers (already in the computer file) was being made available by HHS. At present, Massachusetts is utilizing CDS in order to determine costs of Medicaid and General Relief associated with ELAs.

- 9) Finding (p. 7, also iii)
• *The FSA's definition of public assistance includes some public health assistance activities which created administrative and service delivery problems for Massachusetts' public health agencies.*

Comment

- For public assistance programs, SLIAG is solely a funding mechanism to reimburse states for services provided to ELA's in qualifying existing programs. Consequently, the implementation of SLIAG in no way affected the actual delivery of services to clients. FSA's broad definition of public assistance, which included several programs traditionally regarded as public health and delivered through the public health system, placed a heavy administrative burden upon the State, and will undoubtedly result in unreimbursed SLIAG-related costs. A similar case can be made for the impact on mental health services. We support the OIG recommendation on p.8 that FSA reconsider its position.

- 10) Description (p. 7)
• For [Department of Public Health SLIAG-reimbursable activities] contracts with private vendors, requests for proposals will be written and treated as a local grant.

Comment

- As stated in the draft report's previous sentence, DPH services are funded through the State's appropriation act. The Department establishes service contracts for some programs, paid by the State's appropriated funds. A portion of the State's cost of such programs (including any contracts) is reimbursed from SLIAG; however, there are no service contracts or grants directly attached to SLIAG funds.

- 11) Finding (p. 9)
• The Department of Education had not implemented a system to identify ELAs as of the review period. Adaptation of the current enrollment will be made by checking alien card numbers at intake. Current refugee policy is bound by the Executive Order covering articles on nondiscrimination which prevents agencies from requesting and disseminating information on citizenship status.

Comment

- The Department had not implemented a client tracking system because it had not yet issued its request for proposals for SLIAG-funded classes. As these classes were designed explicitly for ELAs, the Department was prepared to (and did) require all SLIAG-funded programs to record enrollees' alien registration numbers at intake. Again, as noted earlier, the Executive Order did not bar collecting such information, as it is required by federal regulation.

- 12) Description (p. 9)
• It is anticipated that since administrative costs for the education programs are low, the program will be fully funded with 1.5% of the grant for administrative costs.

Comment

- To the contrary, from the beginning the Department has stated that its actual administrative costs for the education programs will far exceed the 1.5% ceiling. Massachusetts has joined many other states in seeking a change in SLIAG to permit a higher ceiling to reflect actual costs.

- 13) Finding (p. 10, also iii)
• Conflicting interpretations of the terms "public charge" and "permanently residing under the color of law" has caused confusion among immigrants as to what services they are eligible to receive.

Comment

- The confusion stems directly from the absence of clear INS policy directives regarding these issues. This lack of clarity served as a deterrent to ELA's in accessing services. Along with many other States, Massachusetts has made significant efforts to obtain clarification from INS and HHS on these terms and their application.

- 14) Finding (pp. 12, 13, also iii, iv)
- *The State Departments of Public Welfare, Public Health and Education had not established methods to document costs for services and benefits provided to individual ELAs. Massachusetts should develop methods for determining and documenting these costs.*

Comment

- At the time of the OIG visit in June 1988, no department had yet implemented specific SLIAG cost claiming methodologies due to the lack of FSA policy directives noted above. However, the Department of Public Health had identified appropriate "public health" programs for which to use the population ratio methodology, which does not require tracking service costs to individual ELA's.

Both the Department of Public Health and the Department of Public Welfare were awaiting release of final procedures for the Cost Documentation System (CDS) for their "public assistance" programs, which do require such individual tracking. CDS was not ready for use until July, 1989. The Department of Education did not begin its SLIAG-funded programs until Jan. 1, 1989. From their inception, those programs implemented an individual ELA tracking system as specified in the Department of Education's Request for Proposals for SLIAG-funded ESL/Civics classes.

As of this writing, Massachusetts has developed cost claiming methodologies for all SLIAG-reimbursable programs and has worked closely with all impacted agencies to ensure both accuracy and sensitivity.

- 15) Finding (p. 12)
- *At the time of the inspection, Massachusetts had not received formal guidelines from FSA on determining and claiming SLIAG administrative costs, and Massachusetts had not developed methods for determining and documenting these costs.*

Comment

- Massachusetts has had no problems in determining or documenting the costs of administering programs which are partially or fully SLIAG-funded, nor in determining or documenting central grant administration costs. The Commonwealth has comprehensive and appropriate systems in place.

Before drawing any SLIAG funds, Massachusetts established a separate account for central SLIAG administration, and all costs are identifiable by line item and are fully auditable.

The OIG report misses the point here. The problem did not lie in our ability to identify or control administrative costs. The problem was that absent FSA policy and decisions about each program's cost claiming methodology, it was not possible to determine what portion of each program's administrative costs would be SLIAG-reimbursable.

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